



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 4, 1996

Mr. James Showen
Sr. Assistant City Attorney
City of Tyler
P.O. Box 2039
Tyler, Texas 75710

OR96-2024

Dear Mr. Showen:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 102119.

The Tyler Police Department (the "department") received an open records request for all tape recordings of telephone calls and radio dispatches pertaining to an aggravated robbery. You seek to withhold the requested tape recording pursuant to section 552.108 of the Government Code.¹

Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is

¹You also contend that the requested information is confidential in accordance with the Texas Supreme Court's holding in *Hobson v. Moore*, 734 S.W.2d 340, 341 (Tex. 1987). As this office has previously noted, the *Hobson* case has no bearing on whether information is subject to public disclosure under the Open Records Act. In *Hobson*, the court cited the predecessor statute to section 552.108 by analogy and recognized a law enforcement investigation privilege from civil discovery. This office, in Attorney General Opinion JM-1048 (1989), cited *Hobson* and its progeny but noted that neither *Hobson* nor any other reported Texas case directly addressed whether the act's exceptions created new privileges from discovery. Subsequent to the court's holding in *Hobson*, the Seventy-first Texas Legislature added subsection (f) to section 14 of former article 6252-17a (now found at Gov't Code § 552.005):

(f) This Act does not affect the scope of civil discovery under the Texas Rules of Civil Procedure. The exceptions from disclosure under this Act do not create new privileges from discovery.

Acts 1989, 71st Leg., ch. 1248, § 18, at 5029. This amendment reflects a legislative overruling of the court's dicta that the act's exceptions create privileges from discovery.

maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; *see Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). Because the requested tape recording comes within the purview of section 552.108, we conclude that the department may withhold this record. We note, however, that the department may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/RWP/ch

Ref.: ID# 102119

Enclosures: Tape recording

cc: Mr. Kurt Noell
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(w/o enclosures)